

**Beede Waste Oil Superfund Site RD/RA Consent Decree**

Civil Action No. 1:07-cv-00060-PB

Civil Action No. 1:07-cv-00080-PB

**APPENDIX K**

**Easements**

**Beede Waste Oil Superfund Site RD/RA Consent Decree**  
**Civil Action No. \_\_\_\_\_**

**APPENDIX K-1**

**DECLARATION OF SOIL AND GROUNDWATER USE RESTRICTIONS**

Site: Beede Waste Oil Superfund Site  
11 Kelley Road and 42 Old County Road  
Plaistow, New Hampshire  
Tax Map 31, Lot 47 and Tax Map 31, Lot 40

NHDES Site No.: 198404068

This Declaration of Activity and Use Restriction ("Declaration") is made on this \_\_\_\_\_ day of \_\_\_\_\_, 2007 by \_\_\_\_\_, together with its successors and assigns (collectively "Owner").

\_\_\_\_\_ grants to the State of New Hampshire and EPA, as a third-party beneficiary, the right to enforce the restrictions set forth in this Declaration.

**WITNESSETH**

**WHEREAS**, in conjunction with a Consent Decree executed by a number of parties, the United States on behalf of the U.S. Environmental Protection Agency ("EPA") brought a lawsuit, No. \_\_\_\_\_, in the United States District Court for the District of New Hampshire under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675, seeking the cleanup of the Beede Waste Oil Superfund Site (the "Site") in Plaistow, New Hampshire.

**WHEREAS**, the State of New Hampshire (the "State") intervened in the EPA's lawsuit, raising claims under RCRA, CERCLA, and the State of New Hampshire Hazardous Waste Management Act, New Hampshire RSA Chapter 147-A, and joining in the Consent Decree.

**WHEREAS**, the remedy for the Site, set forth in the January 9, 2004 Record of Decision ("ROD"), requires remediation of certain soil and the implementation of institutional controls for additional soil at the Site.

**WHEREAS**, the ROD also requires that these institutional controls restrict the use certain portions of the Site until further notice.

**WHEREAS**, \_\_\_\_\_ is the owner in fee simple of the Site, consisting of two parcels of land situated at 11 Kelley Road (Parcel 1) and 42 Old County Road (Parcel 2) in Plaistow, New Hampshire with the buildings and improvements thereon, identified respectively as Tax Map 31, Lot 47 and Tax Map 31, Lot 40, recorded respectively at the Rockingham County, New Hampshire Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_ and Book \_\_\_\_\_, Page \_\_\_\_\_, which are more particularly bounded and described in Exhibit A,

attached hereto and made a part hereof, and which are depicted in Exhibit B, attached hereto and made a party hereof (the “Property”).

**WHEREAS**, Owner agrees, and intends by this document, to restrict activity and use of the Property as set forth herein, and to have all such restrictions run with the land and be binding upon Owner’s heirs, successors and assigns.

**WHEREAS**, Owner also agrees, and intends by this document, to grant to the State of New Hampshire the right to enforce such restrictions, and to have that grant secured by the lien filed   [date]   by the State. This grant will also provide the State and EPA access to the Property to implement the ROD remedy and will permit the State and EPA, as a third-party beneficiary, the right to enforce the terms of the grant in order to protect any components of the ROD remedy on the Property and to protect human health and the environment by reducing the risk of exposure to contaminants.

**WHEREAS**, the State, acting by and through the Department of Environmental Services (“NHDES”), and EPA have reviewed and approved this Declaration,

**NOW, THEREFORE**, Owner declares, and notice is hereby given, that the Activity and Use Restrictions (“AUR”) set forth below apply to the Property:

1. **Permitted Activities and Uses.**

All activities required by EPA, after consultation with the State, to meet the requirements of the ROD and any associated Statement of Work are specifically permitted.

Following completion of source control activities, the following activities may occur at the Site:

- (a) Any otherwise allowed activity involving the use of the surface of the Property, including excavations that do not disturb subsurface soil below ten (10) feet. Upon completion of any such excavation activity, such ten (10) foot protective grade shall be restored, unless otherwise evaluated and approved by EPA and NHDES. Final “as built” plans, showing all modifications to the Site’s grading, will be submitted to EPA and NHDES, and a copy of all such plans shall be recorded in the Rockingham County, New Hampshire, Registry of Deeds as an amendment to this Declaration of Activity and Use Restrictions;
- (b) Groundwater remediation activities as required by EPA under the ROD, including, but not limited to, any required treatment of deeper soils and on-site pumping and treating of groundwater; and
- (c) Such other activities and uses, as requested by Owner, which, in the opinion of EPA, with the concurrence of NHDES, shall present no greater risk or harm to human health, safety, or welfare, or to the environment, than the permitted activities and uses set forth herein.

2. **Restricted Activities and Uses.**

All activities and uses that, if implemented at the Site, may result in a significant risk of harm to human health, safety, or welfare, or to the environment, or present a substantial hazard, are prohibited as follows:

- (a) After source control measures have been completed in accordance with the ROD, any activity which is likely to disturb contaminated soil, including, but not limited to, excavation associated with underground utility or construction work;
- (b) Use of the Property as a residence, school, nursery, or recreational areas (such as parks or athletic fields) prior to the time source control measures have been completed in accordance with the ROD;
- (c) Any activity including, but not limited to, relocation of contaminated soil unless such activity is first evaluated and approved by EPA and NHDES; and
- (d) Installation of groundwater wells, or any removal or exposure to groundwater (except for remediation purposes), unless such activity is first evaluated and approved by EPA and NHDES.

3. **Obligations and Conditions.**

Upon completion of the source control remedy, no soil excavation shall occur unless the following information, which is subject to review and approval by EPA and the State, is submitted:

- (a) A Soil Management Plan, prepared by a qualified Environmental Consulting Firm and approved by the NHDES prior to commencement of any subsurface activity that may involve impact to contaminated soil or that would result in direct contact to humans or present a greater risk to the environment.
- (b) A site specific Health and Safety Plan, prepared by a Certified Hygienist or other qualified health and safety professional, in accordance with 29 CFR 1910.120, prior to commencement of any subsurface activity that may involve impact to contaminated soil. The plan must clearly identify the location of the contaminated soils and specifically identify the types of personal protective equipment, monitoring devices, and engineering controls necessary to ensure that workers and others at the Property are not exposed to through dermal contact, ingestion, and/or inhalation of particulate dusts.
- (c) Contaminated soil may not be relocated or moved unless first evaluated by an Environmental Consulting Firm, which shall render an opinion that

such relocation or movement of the soil is in accordance with the Soil Management Plan (if applicable) and is not inconsistent with maintaining a condition that is protective of human health and the environment, as determined by the NHDES and EPA.

- (d) Prior to commencement of any subsurface activity, not currently contemplated by the ROD, that may involve extraction or release of contaminated groundwater that could result in direct contact to humans, or present a greater risk to the environment, a human health and ecological risk assessment must be conducted by a qualified Environmental Consulting Firm and approved by the NHDES and EPA.
- (e) If CERCLA actionable risks are identified for any activity not currently contemplated by the ROD, a site specific Groundwater Management Plan must be prepared by a qualified Environmental Consulting Firm and approved by the NHDES. In addition, a site specific Health and Safety Plan prepared by a Certified Hygienist or other qualified health and safety professional, in accordance with 29 CFR 1910.120, must be approved by the NHDES prior to commencement of any subsurface activity that may involve release or exposure to contaminated groundwater. The plan must clearly identify the types of personal protective equipment, monitoring devices, and engineering controls necessary to ensure that workers and others at the Property are not exposed to contaminated groundwater through dermal contact, ingestion, and/or inhalation.

Nothing in Paragraph 3 is intended to impose duplicate, or greater, requirements than those contained in the ROD. All work required, authorized, and approved by EPA under the ROD, or any related Statement of Work, shall be exempt from the requirements of this paragraph.

4. **Emergency Procedures.**

In the event of any emergency or condition that may result in significant risk or harm to human health from exposure to site contaminants, the Owner shall:

- (a) Promptly notify NHDES and EPA of such emergency or condition.
- (b) Limit disturbance of contaminated media to the minimum reasonably necessary to adequately respond to such emergency or condition.
- (c) Implement appropriate precautions to reduce exposures to contaminated media by workers at the Property and neighbors to the Property.
- (d) Engage the services of an Environmental Consulting Firm to supervise the preparation and implementation of a written plan, for review and approval by NHDES and EPA, for restoring the Property to a condition consistent with the AUR.

- (e) Take precautions to limit disturbance of contaminated media to the minimum necessary to respond to the emergency or condition.

5. **Proposed Changes in Activities and Uses.**

The restricted activities and uses set forth above may be amended or modified upon mutual agreement by the Owner, the NHDES and EPA. Any proposed changes in activities and uses at the Property that may result in a greater risk of exposure to contaminated media than currently exists at the Property shall be evaluated by the NHDES and EPA as to whether the proposed changes will present an unacceptable level of risk to human health and the environment. Approval by the NHDES and EPA shall be required before such proposed activity or use is commenced.

6. **Duration of Activity and Use Restrictions.**

The activity and use restrictions set forth herein shall run with the land, and, pursuant to New Hampshire RSA 147-A:14-a and 147-B:10-b (2005), and for the benefit of public health, safety, welfare, and environment of the State, the restrictions shall become binding upon the Owner and successive owners of the Property or portions of the Property and shall remain in effect until the soil contamination at the Property meets the applicable state and federal standards for any restricted activity or use. These restrictions and easements shall be deemed to constitute conservation restrictions pursuant to RSA 477:45 through 47 (2001), and shall be enforceable by the State.

7. **Termination of Activity and Use Restrictions.**

The activity and use restrictions set forth herein may be terminated upon mutual agreement by the Owner, the NHDES and EPA and upon a showing that these restrictions are no longer necessary to maintain the protection of human health and the environment.

8. **Recordation.**

This Declaration of Activity and Use Restriction, any modifications or amendments, and any terminations, are effective upon recordation of notice in the chain of title for the Property at the Rockingham County, New Hampshire, Registry of Deeds. All recordation costs shall be the responsibility of the Owner. The Owner shall provide certified copies of all AUR recorded instruments to NHDES and EPA within 60 days of recordation.

9. **Incorporation Into Deeds, Mortgages, Leases, and Instruments of Transfer.**

This Declaration of Activity and Use Restriction shall be incorporated either in full, or by reference into the chain of title in all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer, whereby an interest in and/or a right to use the Property or a portion thereof is

conveyed. The notice in such instrument shall be substantially in the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS  
SUBJECT TO AN ACTIVITY AND USE RESTRICTION,  
DATED \_\_\_\_\_, 2006, RECORDED IN THE  
PUBLIC LAND RECORDS DATED \_\_\_\_\_, 2006,  
AND RECORDED IN BOOK \_\_\_\_\_, PAGES \_\_\_\_\_ OF THE  
ROCKINGHAM COUNTY LAND RECORDS.**

10. **Notices.**

Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

**To Property Owner:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**To New Hampshire Department of Environmental Services:**

Beede Waste Oil Superfund Site State Project Coordinator  
New Hampshire Department of Environmental Services  
P. O. Box 95, 29 Hazen Drive  
Concord, NH 03302-0095  
(603) 271-3503

**To United States Environmental Protection Agency:**

Beede Waste Oil Superfund Site Remedial Project Manager  
United States Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100, MC HBO  
Boston, MA 02114-2023  
(617) 918-1394

Owner hereby authorizes and consents to the filing and recordation of this Notice, which shall become effective upon approval of NHDES and EPA and recordation of this instrument at the Rockingham County, New Hampshire Registry of Deeds in the chain of Title for the Property.

**WITNESSETH** the execution hereof this \_\_\_\_ day of \_\_\_\_\_, 2007.

For: \_\_\_\_\_  
Owner/Grantor

THE STATE OF NEW HAMPSHIRE \_\_\_\_\_, SS.

On the \_\_\_\_ day of \_\_\_\_\_, 2007, before me appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the person whose name appears above, and he/she subscribed his/her name to the foregoing document.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
My commission expires:

ACCEPTED ON BEHALF OF STATE OF NEW HAMPSHIRE.

By: STATE OF NEW HAMPSHIRE  
DEPARTMENT OF ENVIRONMENTAL  
SERVICES

\_\_\_\_\_  
Michael J. Walls  
Assistant Commissioner

THE STATE OF NEW HAMPSHIRE \_\_\_\_\_, SS.

On the \_\_\_\_ day of \_\_\_\_\_, 2007, before me appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the person whose name appears above, and he/she subscribed his/her name to the foregoing document.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
My commission expires:



## **EXHIBIT A**

[Property Description]

## **EXHIBIT B**

[Plan of Property]

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**APPENDIX K-2**

**NOTICE OF GROUNDWATER MANAGEMENT PERMIT  
GWP-\_\_\_\_\_**

The New Hampshire Department of Environmental Services has issued Groundwater Management Permit # \_\_\_\_\_ (“Permit”) to \_\_\_\_\_. The property is identified as Plaistow Tax Map 31, Lot 47 and 40 and recorded at the Rockingham County Registry of Deeds at Book \_\_\_\_, Page \_\_\_\_\_.

The Permit establishes a Groundwater Management Zone (“GMZ”), an area within which groundwater use must be restricted and monitored due to the presence of groundwater contaminants that exceed the State’s Ambient Groundwater Quality Standards (“AGQS”). In accordance with New Hampshire Code of Administrative Rules Env-Wm 1403:17, Notice of Groundwater Management Permit must be recorded in the chain of title of each property located within the GMZ at the Registry of Deeds for the county in which the property is located.

The permit was issued on \_\_\_\_\_ and expires on \_\_\_\_\_ unless renewed for subsequent five-year period(s). Groundwater restrictions will remain in effect until such time as the AGQS are restored within the GMZ. A release of the Notice will be recorded at that time.

The following properties are located within the GMZ and are subject to the restrictions contained in the Permit, which is available for review at the New Hampshire Department of Environmental Services, 29 Hazen Drive, Concord, NH 03301.

**Property Owner/Address**

**Tax Map/Lot**

**Deed Reference Book/Page**

/s/ \_\_\_\_\_, Owner

\_\_\_\_\_  
Date